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SUPREME COURT

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950-109
Nos. 862 and 952

In the Supreme Court of the United States

OCTOBER TERM, 1956

HOOPER MOTOR EXPRESS CO., INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

TANK TRUCK RENTALS, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 862

HOOVER MOTOR EXPRESS CO., INC., PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

No. 932

TANK TRUCK RENTALS, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

MEMORANDUM FOR THE RESPONDENTS

The question presented in these cases is whether amounts paid by trucking concerns as fines or penalties for violations of state weight limitation laws are deductible as ordinary and necessary business expenses under the provisions of Section 23 (a) (1) (A) of the Internal Revenue Code of 1939. We

submit that the decisions below are correct for the reasons stated therein, namely, that allowance of the claimed deductions would frustrate the clearly defined public policies reflected by the applicable state laws. See *Textile Mills Corp. v. Commissioner*, 314 U. S. 326, 335-339; *Commissioner v. Heipinger*, 320 U. S. 467, 473-475; *Lilly v. Commissioner*, 343 U. S. 90, 94-97. We believe, however, that review by this Court would be appropriate and, accordingly, do not oppose the granting of the petitions.

The Government, on behalf of the Commissioner of Internal Revenue, is filing a petition for a writ of certiorari to review the decisions of the Seventh Circuit in *Sullivan v. Commissioner* and *Ross v. Commissioner*, both 241 F. 2d 46, and in *Mesi v. Commissioner*, decided April 5, 1957 (1957 C. C. H., par. 9551). As is stated in the petition in those cases, the Seventh Circuit has decided an important question of federal tax law in such a way as to conflict with other decisions, and the rationale employed is out of harmony with the decisions in the present cases.

The courts below, applying the public policy doctrine, have denied deductions for fines paid because of violations of state weight limitation laws, even though, in some instances, the violations were unintentional and inadvertent and were, in a sense, an integral aspect of the taxpayers' business. In refusing, nevertheless, to allow the deduction on the ground that otherwise there would be a frustration of the public policy of the several states whose laws were broken, the courts below have reached a result

which appears inconsistent with the views of the Seventh Circuit which would allow a deduction so long as the expense is an integral aspect of the business.

For the reasons stated in the petition for a writ of certiorari being filed in the *Ross, Sullivan and Mesi* cases, *supra*, we do not oppose the granting of the petitions in the present cases.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

MAY 1957.

TURN TO NEXT CARD